



Oregon

Theodore R. Kulongoski, Governor

Board of Massage Therapists

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BOARD MEETING MINUTES

June 19, 2009

Attendance

Board Members:

Jordan Barton, LMT, Chair
Kathy Calise, Public Member, Vice Chair
Jeanna Catalano, LMT
Crystal Collier, LMT
Heather Bennouri, LMT
Craig McMillin, Public Member
Tim Driscoll, DC, Public Health Member

Staff:

Patty Glenn, Executive Director
Diana Nott, Enforcement Coordinator
Mindy Tucker, Director of Compliance

Public:

Lori Lindley, AAG
Leah Bowder
Johanna Rayman

Chris West
Kim Cottrell
Sabra Marcroft

Steve Cable
Linda Tittle

Deborah Skell
Kenneth Largent

Call to Order -

Barton called the meeting to order at 10:06 am. Role call was performed. **Barton, Bennouri, Catalano, Collier, Calise, and Driscoll** were in attendance. **McMillin** arrived later in the meeting.

1) **Approve Agenda – Calise moved** to move Executive Session to after Board Business and approve the agenda. **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**

2) **Approve Minutes of May 15, 2009 – Bennouri moved** to add Kyle Martin, AAG as showing in attendance at the May meeting and approve the minutes as amended. **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**

3) **Public Comments –** No public comments made

4) Director's Report –

a) **Statistics - Glenn** passed out the monthly statistics report to the Board Members.

b) **Finances – Glenn** provided the Board with a copy of the current budget and finances. **Glenn** reviewed the budget with the Board and there was a discussion on how items were trending and how they were budgeted. **Glenn** reported the following information: How the current economy can impact the number of incoming applicants, what expense categories should look like on the report, that there would be no merit or cost of living increases per state and union trending, audit expenses, bank charges and merchant services charges, computer expenses and moving to an electronic platform, membership dues, equipment repair, examiner payments, insurance and risk assessment, investigative expenses and streamlining processes to reduce the hourly expenses of external investigators, janitorial budget, renegotiating the lease, office furniture, postage, professional development, security, taxes, telephone and internet and travel.

- c) **2009 Legislative Session – Glenn** reported that HB2059 passed with the National Certification Board exam language in place.
- d) **Health-Related Boards** – There was no meeting to report on
- e) **SIBA Update** – SIBA met to deal with issues of the audit. **Glenn** wasn't able to attend this meeting, but she did receive the draft minutes and will forward those to the Board.

Glenn reported that she sent out a broadcast e-mail regarding inquiries into the Governor's Press Release last month. She sent an agency e-mail explaining where to go with remarks. Since that release has gone out, we've received 140-150 phone calls and emails with questions and comments. Because some of the questions being asked are consistently the same, **Glenn** is working on a Frequently Asked Questions document. **Barton** and **Bennouri** are going to help with that document. More information will go out to the Board members as it is crafted. **Calise** asked if the Board could be included in getting the information. **Glenn** stated that they would. **Collier** asked if the information could be placed on the web site. **Glenn** stated that it would be placed on the web site.

Glenn provided the Board with a copy of a letter from Legislative Counsel regarding two issues with our rules. There was a discussion on the intent of the three years to four years on a lapsed license change. The Board had intended to align the time frame with the renewal process. However, statutorily we are unable to make that change at this time. In addition, it was discovered that the statute language does not recognize universities for meeting the core curriculum educational requirements, so universities have to be stricken from the rules. Now there is the issue of having to figure out how to address those people that have some university education, until the statute can be changed, so that they are not unfairly burdened. These concerns have been addressed in the rules being voted on today.

- 5) **Law Enforcement Action** – there was a brief discussion on bodywork ads in publications. It was determined that it is the responsibility of the publication to make sure that what is being promoted is legal.
 - a) **Case 374 (Dale Vigil)** - **Collier moved** to accept the Final Order as written and issue it on June 29, 2009 if timely exceptions to the Proposed Order are not filed by June 29, 2009 **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**
 - b) **Case 785 (Duane Anthony Dorsey)** – **Calise moved** to issue a Notice of Proposed Action for 1 violation of ORS 687.021(1), practicing massage without a license, and 25 violations of ORS 687.021(2)(a), advertising massage without a license for a total civil penalty of \$17,500. **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**
 - c) **Case 806 (Ladonne Rodriguez)** – **Catalano moved** to issue a Notice of Proposed Action for 1 violation of ORS 687.021(1), unlicensed practice of massage, and 9 violations of ORS 687.021(2)(a), unlicensed advertisement of massage, for a total civil penalty of \$9,500. **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**
- 6) **Committee Updates** –
 - a) **Education/Scope of Practice Committee** – met on the morning of the May Board meeting. A report was provided to the Board.
 - b) **Multiple Discipline Task Force** – No meetings have occurred at this time. **Glenn** is to meet with Whitney Lowe in the near future to discuss the possibility of having him chair that committee.

7) **FSMTB Updates** – There was a discussion on the fees associated with the FSMTB renewal. The day prior, California had voted to use the MBLEx and the certification exams administered by the National Certification Board, though not through the NESL option. **Barton** asked if they were moving towards state certification. **Glenn** reported that it's a voluntary certification right now done through a non-governmental agency. She will get more information to the Board as it becomes available. There was a brief discussion, to get **Driscoll** up to speed, on what the FSMTB is. **Bennouri** moved to renew Oregon's FSMTB membership. **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.** **Glenn** reported that in the past week, FSMTB had finished the 2nd review of the Spanish forms. In addition, they are working on the development of an instructor's guide.

Bennouri moved to adjust Public Forum to just prior to Executive Session. **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**

8) **Board Business** –

a) **Board Member Training** – AAG Lori Lindley provided training to the Board members. The training covered the Contested Case Hearing process and what that looks like. She talked about the Office of Administrative Hearings and Administrative Law Judges. There was a discussion on what is a matter of public record and what is exempt from disclosure – Licensee or Applicant Hearings are not public, however unlicensed practice cases are open to the public. Other topics covered in the training included Proposed Orders and the Board's ability to modify those Orders, what constitutes a public document, what is confidential by law and what is not, sharing information with other agencies, courts and law enforcement, the discretion of the Board in making determinations, what happens if a Respondent requests a Hearing, the Board's role after a Proposed Order, potential changes to the burden of proof requirement should SB274 pass, Respondent's rights, ethics law and conflict of interest, public meetings laws and the Board's ability to view hearings and obtain transcripts.

McMillin arrived at 12:18pm.

Bennouri moved to go into Public forum. **In favor: Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Barton and McMillin were absent. Motion carries.**

9) **Public Forum** – Opportunity to share thoughts that pertain to agenda items.

Linda Tittle introduced herself as a Feldenkrais practitioner. She thanked the Board for all of the work that they do. She is present because of a letter that the Board received asking why the Feldenkrais Method appears on the Oregon Practical Exam application as a potential modality of demonstration when it is her opinion that Feldenkrais is not massage.

Kim Cottrell is also a Feldenkrais practitioner and has the same question about the inclusion of Feldenkrais Method in the Oregon Practical Exam. She states that the work is educational as opposed to massage. Nobody removes any clothing and the practitioner is looking at how the client moves. She is hoping to get more insight.

Steve Cable is a LMT and Feldenkrais student interested in the discussion as well. He stated that

he appreciated AAG Lindley's presentation.

Sabra Marcroft explained that she is a LMT in an 800-hour training for Feldenkrais and she's interested in seeing how the Board can cooperate with the Feldenkrais Guild. She is also a massage educator and wants to see how these cooperations can work better in the future.

Deborah Skell is also a Feldenkrais practitioner. She appreciates the opportunity to be here. She stated that she shares a concern for regulatory excellence. She provided three letters from other Feldenkrais practitioners with the same concerns as those voiced thus far and seek to be recognized as distinct.

Johanna Rayman, also a Feldenkrais practitioner and Licensed Clinical Social Worker, believes that different modalities of touch should be regulated differently.

Kenneth Largent introduced himself and provided some background on his professional history for the Board. He expressed that he feels that massage therapy and how a LMT works with the body is quite distinct and that as a Feldenkrais practitioner they do not address those same issues. He states that they seek to alter, change and improve the body and that touch through Feldenkrais Method is primarily directed through the skeleton. He states that no other state includes Feldenkrais Method as part of their practice act. He requests that the Board remove Feldenkrais Method from the body of works available for demonstration on the Oregon Practical Exam Candidate Handbook.

Glenn explained that about 5 years ago the Board was approached, being asked to exclude the Feldenkrais Method from the practice act. The request was denied. She explained the old processes for the Oregon Practical Exam and how that has changed in the past year. She explained how Feldenkrais Method ended up on the Candidate Handbook, as it was one of the top modalities listed on the FSMTB Job Task Analysis. She further explained that with this Legislative Session, the Board has created a Multiple Discipline Task Force to review the various modalities of bodywork that are covered in the current practice act and discuss possibilities on how to deal with those modalities. There is the desire by the House and Senate to figure these things out, as well as a desire by other states. It was explained that Oregon's practice act does not name any particular modality, as it is a matter of what is being done, not what it's called. **Glenn** invited the group to leave their information and to participate in the Multiple Discipline Task Force when it is up and running.

There was a discussion on how different conclusions are being drawn while looking at the same definition. **Glenn** indicated that the role of the Task Force is specifically geared towards these issues. It was further explained that it is the desire of the Legislature to have these issues looked at by the 2011 Session.

The Board agreed to remove Feldenkrais Method from the Oregon Practical Exam Candidate Handbook, with the understanding that it does not prevent someone from petitioning the Board to use the Feldenkrais Method as their modality of choice for demonstration, nor does it indicate that the practice is not regulated.

10) Pac/West Presentation – Chris West of Pac/West presented to the Board. They are a public relations firm in the Wilsonville area. He shared a bit of what they do and who they represent. He indicated that this may be an opportunity for Pac/West to help the Board with some things that we are

struggling with. They would develop a plan that meets the Board's needs in positioning the Board with challenges that are to be had in the next biennium. They are not proposing to be the face of the Board, but to advise and help prepare the Board with how to deal with issues as we move forward. They can help the Board with how to address issues, who to talk to, etc. **Glenn** explained that the Board has had discussion in the past as to whether or not to obtain a lobbyist or someone to represent the Board. With the potential suspension, potential consolidation and other issues, there is a lot of damage control to do. It was felt that the Board needed help to be empowered and Pac/West would help to empower and educate Board members and help them to feel more confident in making those much needed connections.

Calise moved to enter into Executive Session at 1:25pm. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.** The Board returned from Executive Session at 2:30pm.

EXECUTIVE SESSION

The Board may enter into Executive Session to discuss certain matters on the agenda pursuant to ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection, ORS 192.501(4) to review test questions, scoring keys and other data used to administer a licensing examination, ORS 192.660(2)(h) consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed, ORS 192.660(2)(k) to consider information obtained as part of an investigation of a licensee or applicant by a health professional regulatory board and ORS 192.660(2)(i) To review and evaluate the job performance of the Executive Director or staff. Prior to entering into Executive Session, the nature of and authority for holding the Executive Session will be announced.

11) Executive Session

- a) **MBLEx Exam Review (192.501(4))** – not reviewed
- b) **Law Enforcement (192.660(2)(k))**
- c) **Closed Case report** – to be put on July Agenda

12) Action on Executive Session Items

- a) **Case 757 – Bennouri moved** to offer a Consent Order where Licensee agrees to surrender his license voluntarily and agrees never to re-apply again in the future. If the Licensee does not agree, then move to revoke Licensee's License. **In favor: Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Barton recused himself. Motion carries.**
- b) **Subpoena for Board Investigator – McMillin moved** to allow Helen Bicart, Board Investigator, to testify as the subpoena requests. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**
- c) **McMillin moved** to form a special committee to put together a written protocol on how to deal with the Legislature, legislation and the Governor's Office in the future. In the interim, all contact with the Legislature and regarding pending legislation should be done exclusively through the Board Chair, if **Glenn** is asked to testify it needs to be done through the Board Chair. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**
- d) **McMillin moved** to form a special committee to propose a protocol regarding use of the Board attorney. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**
- e) **McMillin moved** to immediately form a special committee to review both salaries and performance and provide information to the Board and put together a protocol on how to deal with this issue. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**
- f) **McMillin moved** to appoint a special committee to review office procedures and written rules, and to propose any changes, adjustments, modifications necessary. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

Discussion was had on the timeline in which to have these items concluded. It was determined that some of the items could be taken care of prior to October. Was it practical to have the items completed by the August work session? It was determined that, at the very least, there would be an update on the status of these items by the August Board Meeting and Work Session.

Regarding the Legislative and Government Office Policies, **McMillin** and **Calise** were appointed to that committee.

Regarding attorney usage, **McMillin** and **Bennouri** were appointed to that committee.

Regarding salary and personnel review, **Catalano** and **Driscoll** were appointed to that committee.

Regarding office practice and procedures, **Catalano** and **Driscoll** were appointed to that committee.

McMillin was excused from the meeting at 2:40pm.

13) Public Comment – Opportunity for the public to address the Board. There was no public in attendance at this time.

14) Board Business, continued

a) Review of public comment/testimony and Vote on Proposed Rules Changes – Glenn reported that there was no verbal or written testimony at the Hearing. **Bennouri moved** to accept the proposed Rules changes, effective July 1, 2009. **In favor: Barton, Bennouri, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**

Proposed rules changes effective July 1, 2009

334-001-0012 Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' ~~2007-2009~~ **2009-2011** Biennium budget of ~~\$1,287,346~~ **\$1,300,000**.

334-001-0060 Definitions

(8) "Certified Class or program" means a class or program that is approved by the Board and is offered:

- (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or
- (b) By a community college ~~or university~~ approved by the Department of Education; or
- (c) In another state and licensed or approved by the appropriate agency in that state.

334-010-0005 Applications

(3) Applicants for examination shall submit the following with their application:

- (a) A copy of a ~~legal picture~~ **valid government issued photo** identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

- (6) All application documents for examination and licensure submitted in a language other than English shall be accompanied by:
- (a) An accurate translation of those documents into English;
 - (b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; **and**
 - (c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.
 - (d) Any costs of translation of all documents required by the Board shall be at the expense of the applicant.

334-010-0010 Examination

- (6) Failure to Pass: An applicant must pass the practical examination within 24 months of the initial date of application. **The Board may require an applicant with 3 or more examination failures to undertake and satisfactorily complete a Board approved remediation plan prior to reapplying for the examination.**

334-010-0017 Lapsed License

- (4) All information required for restoring a lapsed license must be received within [4] **3** years of the date of lapsing. Thereafter, one must apply as a new applicant.

334-010-0033 Fees

~~Licensure fees will not be refunded.~~

- ~~(1) The fee for an initial and renewal license is \$100 per biennium.~~
- ~~(2) The fee for inactive license is \$50 per biennium.~~
- ~~(3) The fee for the practical examination and retake is \$150.~~
- ~~(4) Application fee \$50.~~
- ~~(5) Examination fee will be refunded only when the applicant is unqualified by Oregon statutes and no inquiry or investigation is initiated.~~
- ~~(6) A \$25 fee will be charged per week, to a maximum of \$250, for any late license renewal.~~
- ~~(7) The temporary license fee is \$25.~~
- ~~(8) The fee for mailing list is \$100.~~
- ~~(9) The fee for a license reprint is \$5.~~
- ~~(10) The fee for license verification is \$5.00.~~

- (1) The fees are:**
 - (a) \$100 per biennial renewal for initial or active license;**
 - (b) \$50 per biennial renewal for inactive license;**
 - (c) \$25 per week, up to a maximum of \$250, for any late renewal;**
 - (d) \$50 for exam/endorsement application processing;**
 - (e) \$150 for each practical examination;**
 - (f) \$100 for mailing list;**
 - (g) \$5 for license reprint;**
 - (h) \$5 for license verification; and**
 - (i) other administrative fees as allowed by law.**
- (2) Application and licensure fees are not refundable**
- (3) Examination fees will be refunded only when requested in writing and either:**
 - (a) the applicant is unqualified by Oregon statutes, or**
 - (b) applicant requests refund postmarked at least 7 days prior to the exam.**

334-010-0046 Class Certification

- (1) A class or program certified under ORS 687.051 must be offered by:
 - (a) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or
 - (b) By a community college and approved by the Division of Vocational Education or the Department of Education, or the appropriate agency of another jurisdiction; or
 - (c) By a college ~~or university~~ accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association or by a college ~~or university~~ in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; and
 - (d) Approved by the Board.

334-010-0050 Continuing Education

The intent of Continuing Education is to protect the public by maintaining and enhancing competencies as defined in OAR 334-010-0047.

- (1) Each licensee shall complete 25 hours of continuing education in the competencies each renewal period. At renewal time, each licensee shall sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. **The Board may require proof of CE hours.**

334-020-0050 Linens

- ~~(1) The use of soiled linens is prohibited.~~
- ~~(2) All single service materials and clean linens shall be stored at least four inches off the floor in shelves, compartment, or cabinets used for that purpose only.~~
- ~~(3) All single service materials and linens (such as sheets, towels, gowns, pillow cases) used in the practice of massage, shall be furnished clean and fresh for the use of each individual patron.~~
- ~~(4) All soiled linens shall be immediately placed in a covered receptacle.~~
- ~~(5) All soiled linens shall be washed with bleach in a clothes washing machine which provides a hot water temperature of at least 140 degrees Fahrenheit.~~

- (1) When linens are used they must be routinely cleaned and stored in a manner which reasonably assures the sanitary use for each client.**
- (2) The use of soiled linens is prohibited.**
- (3) All soiled linens must be:**
 - (a) immediately placed in a receptacle that closes and prevents cross-contamination;**
 - (b) handled as little as possible;**
 - (c) laundered in a manner that eliminates the risk of spreading parasites, communicable diseases and infections; and**
 - (d) laundered in a manner that removes all residue of topical preparations.**

b) Pac/West – Discussion tabled at this time

c) Revised Complementary and Alternative Modalities and Nursing Practices – The Board reviewed the Nursing Board document that is going to their Board. It was good for the two Boards to interact. **Barton** expressed that he was grateful that it was passed by our Board and that they

solicited feedback. The Board reviewed the current draft and had no additional comments or feedback.

d) Feldenkrais – Barton expressed that it was great to see so many people attend. The issues brought up were addressed earlier in the Public Comment period.

e) Town Hall Meetings & Ethics Classes – Glenn has not put a draft together at this time. She will be out of the office in the middle of July and will be calling in to that meeting. She hopes to have a draft to the Board for the August meeting.

Bennouri was excused at 2:55pm.

f) Intra-bodywork Policy – Driscoll created a draft policy for the Board to review. There was a discussion on the reason for creating the policy. **Calise** feels that this draft is a great first step. There was a discussion on changes to the current version. **Glenn** will make the changes as suggested and bring it back to the Board for review.

g) Vote on Civil Penalty Matrix – There was a brief discussion on where the matrix came from. The Board had discussed using the matrix in the past, but staff was unable to locate any formal motion to adopt the matrix. As a matter of policy, it was determined that the Board would officially adopt the matrix. **Driscoll** moved to adopt the Civil Penalty Matrix. **In favor: Barton, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**

Collier moved to table the MBLEx exam review to the August Board Meeting and table the Closed Case Report to the July meeting. **In favor: Barton, Catalano, Collier, Calise, and Driscoll. Opposed: None. Motion carries.**

Collier expressed an interest in serving on the Multiple Discipline Task Force.

15) Announcements – No announcements.

16) Adjourn Meeting - Calise Moved to adjourn the meeting at 3:20pm. **In favor: Barton, Collier, Calise, and Driscoll. Catalano was absent. Opposed: None. Motion carries.**